



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

HD:hd

Docket No: 05417-00

8 November 2000

CDR [REDACTED] MSC USNR
[REDACTED]
[REDACTED]

Dear Commander [REDACTED]

This is in reference to your letter and application dated 21 February 2000, seeking reconsideration of your previous application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

Your previous case, docket number 5162-93, in which you sought removal of your fitness report for 4 January to 10 February 1993, was denied on 13 April 1994. In your current application, you renewed your request to remove the fitness report; and you added new requests to remove your failure of selection by the Fiscal Year (FY) 99 Naval Reserve Medical Service Corps Commander Selection Board and adjust your date of rank and effective date in the grade of commander to reflect an FY 99 selection.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 2 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your letter and current application, together with all material submitted in support thereof, the Board's file on your prior case, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 7 July and 1 November 2000, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. Notwithstanding the advisory opinion dated 7 July 2000, the Board found that the contested fitness report should stand. They noted that Naval Military Personnel Command Instruction 1611.1A, enclosure (1), paragraph 2-25 ("Prohibited Comments") states "Do not refer directly to investigative reports or mention investigations until they are concluded." The Board observed that the first endorsement dated 16 February 1993 on your rebuttal to the contested fitness report, in paragraph 1.c, says "The investigation was completed on 02 February 1993 during the reporting period." Since the Board found no defect in your

performance record, they had no basis to remove your failure by the FY 99 Naval Reserve Medical Service Corps Commander Selection Board, or to backdate your promotion to reflect selection by that promotion board. In view of the above, the Board again voted to deny relief. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

54117-00
1611
PERS-311
7 July 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: CDR [REDACTED] BCNR, [REDACTED]

Ref: (a) Phonecon between [REDACTED] BCNR, and [REDACTED], PERS-311 of
7 JUN 00
(b) NAVMILPERSCOMINST 1611.1A

Encl: (1) BCNR File

1. Enclosure (1) contains the BCNR file of CD [REDACTED]. As discussed in reference (a) the member requests reconsideration for the removal of her fitness report for the period 4 January 1993 to 10 February 1993.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and her right to submit a statement. The member's statement and reporting senior's endorsement are properly reflected in her digitized record.

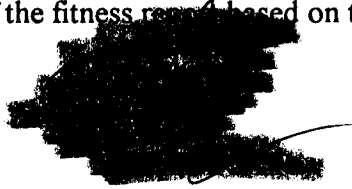
b. The report in question is a Detachment of Officer/Regular report. The member alleges she was denied rights and protections available to her under the Whistleblower Protection Act.

c. As requested by CDR [REDACTED] we have again reviewed her petition and have reconsidered our decision. We now recommend approval of Commande [REDACTED] request to remove the fitness report for the period 4 January 1993 to 10 February 1993.

d. Reference (b) the fitness report instruction in effect at the time of the report, prohibits mentions of any-ongoing investigation in a fitness report.

e. The member proves the report to be unjust or in error.

3. We recommend removal of the fitness report based on the additional material now available.



Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-86

01 NOV 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
COMMANDER INE [REDACTED] USNR [REDACTED]

Encl: (1) BCNR File 05417-00 w/Service Record

1. We are returning enclosure (1) with the following observations and recommendations.
2. Commander [REDACTED] requests removal of a fitness report on the basis it was unjust and in error, we support this removal of the fitness report dated 4 January 1993 to 10 February 1993.
3. Commander [REDACTED] also requests removal of the fail of select for FY-99. Specific reasons for Commander [REDACTED] fail of select are not available since board proceedings are sensitive in nature and records of proceedings are not kept. However, it is our opinion that the report did have a significant detrimental impact on Commander [REDACTED] promotional potential, and that it was probably a major contributing factor in her fail to select on the FY-99 promotion selection board.
4. If the Board of Correction of Naval Records finds that a wrong has been committed, as the evidence may show, then we would also recommend that Commander [REDACTED] fail of select be removed from the FY-99 Reserve Commander Medical Service Corps promotion selection board. If the board recommends removal of the fail of select then we also recommend her date of rank be adjusted to 1 April 1999 as if she had been selected on the FY-99 promotion selection board.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

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| | |
|-------------|----------------|
| To | CDR [REDACTED] |
| Dept/Agency | [REDACTED] |
| Fax # | DSR [REDACTED] |

5098-101 GENERAL SERVICES ADMINISTRATION
NSN 7540-01-817-7000

[REDACTED]
Director, Reserve Officer
Promotions, Appointments, and
Enlisted Advancement Division